

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA ex rel.	)	
ROBERT A. FRY,	)	
	)	
Plaintiffs,	)	
	)	Civil Action: 3:03-0842
v.	)	Hon. Aleta Trauger
	)	Magistrate Judge Bryant
GUIDANT CORPORATION, its predecessor	)	
Cardiac Pacemakers, Inc., a division of	)	
Eli Lilly and Company,	)	
	)	
Defendants.	)	

**UNITED STATES' RESPONSE TO DEFENDANT'S  
STATUS CONFERENCE MEMORANDUM**

Not satisfied with the Joint Proposed Agenda submitted by the parties on August 24, 2009, Dkt. No. 386, defendant filed an unsolicited Status Conference Memorandum ("Guidant Memo") on August 28, 2009, Dkt. No. 387, in order to, among other things, "seek the Court's guidance in the orderly presentation of dispositive motions in this complex matter . . .". Specifically, defendant would like the Court to modify the current case management order to require the parties to file motions for summary judgment at the end of fact discovery, rather than at the end of expert discovery as has been contemplated for over two years.

Defendant's filing fails to acknowledge that the parties have jointly sought the Court's guidance regarding dispositive motions on eight different occasions, (*see, e.g.*, Dkt. Nos. 166, 221, 253, 293, 361, 374, 377, and 379), and on each of those occasions the parties agreed to the current schedule contemplating the filing of summary judgment motions *after* the conclusion of expert discovery. Most recently the parties filed a joint motion on June 26, 2009, only eight weeks ago, in which they agreed that summary judgment motions should be filed after the close

of all discovery. There have been no changes in this case in the past two months that would justify a change to the case management order at this late stage of the litigation.

In addition, the United States believes that the current discovery schedule is the most efficient way to conserve judicial resources. By allowing for the filing of summary judgment motions after expert discovery, the case management order avoids the possibility of multiple rounds of summary judgment motions as further evidence is developed by the parties.

Moreover, the United States would be unfairly prejudiced by defendant's proposed arbitrary change in the case management schedule. While the United States recognizes that the Federal Rules of Civil Procedure permit the defendant to move for summary judgment at any time, *see* Fed. R. Civ. P. 56(b), changing the case management order to preclude the filing of summary judgment motions after the commencement of expert discovery will prevent the United States from using information gathered during expert discovery to move for summary judgment on some or all of its claims. This would prejudice the United States and could ultimately result in more judicial resources being expended in order to try issues that otherwise could have been decided via a dispositive motion.

For these reasons, the United States disagrees with defendant's suggestion to alter the case management order and require the parties to file summary judgment motions prior to the start of expert discovery.

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Response of the United States to Defendant's Status Conference Memorandum was sent to the following persons via the Court's electronic filing system on this 31<sup>st</sup> day of August, 2009:

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s/  
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